

# PCT

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 60287-PCT	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/29902	International filing date (day/month/year) 18 September 2003 (18.09.2003)	Priority date (day/month/year) 20 September 2002 (20.09.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): A61K 9/00, 6/00 and US Cl.: 424/400, 401		
Applicant FMC CORPORATION		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 4 sheets, including this cover sheet.  
☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of \_\_\_ sheets.

- This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☒ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 16 April 2004 (16.04.2004)	Date of completion of this report 26 June 2004 (26.06.2004)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703)305-3230	Authorized officer Humera N. Sheikh <i>J. Roberts for</i> Telephone No. (571) 272-1600

Form PCT/IPEA/409 (cover sheet)(July 1998)

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## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/US03/29902

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed.
- ☒ the description:  
pages 1-28 as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_.
- ☒ the claims:  
pages 29 and 30 as originally filed  
pages NONE, as amended (together with any statement) under Article 19  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_.
- ☒ the drawings:  
pages 1-3 as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_.
- ☐ the sequence listing part of the description:  
pages NONE, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_.

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages NONE
- ☒ the claims, Nos. NONE
- ☒ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

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## III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The question whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

☐ the entire international application,

☒ claims Nos. 4-18

because:

☐ the said international application, or the said claim Nos. \_\_\_\_\_ relate to the following subject matter which does not require international preliminary examination (*specify*):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 4-18 are so unclear that no meaningful opinion could be formed (*specify*):

These claims are improper and are not drafted in accordance with the second and third sentences of PCT Rule 6.4(a).

☐ the claims, or said claims Nos. \_\_\_\_\_ are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claims Nos. \_\_\_\_\_

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the standard.

☐ the computer readable form has not been furnished or does not comply with the standard.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/US03/29902

## V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. STATEMENT

Novelty (N)	Claims <u>1-3</u>	YES
	Claims <u>NONE</u>	NO
Inventive Step (IS)	Claims <u>1-3</u>	YES
	Claims <u>NONE</u>	NO
Industrial Applicability (IA)	Claims <u>1-3</u>	YES
	Claims <u>NONE</u>	NO

### 2. CITATIONS AND EXPLANATIONS

Claims 1-3 meet the criteria of PCT Article 33(2)-33(3) since the closest prior art, US Pat. No. 5,935,556, US 5,965,112 and US 6,042,815 do not disclose nor fairly suggest a composition comprising a cosmetic agent(s), an emulsifier(s), a rheology control agent and water having the instantly claimed amounts, particle size and viscosity range.

Claims 1-3 meet the criteria of PCT Article 33(4) since the claimed system has industrial applicability in cosmetic applications.

# PATENT COOPERATION TREATY

## PCT

### NOTE OF INFORMAL COMMUNICATION WITH THE APPLICANT

(PCT Rule 66.6)

International application No. PCT/US03/29902	Applicant's or agent's file reference 60287-PCT	Date of informal communication (day/month/year) 09 September 2004 (09.09.2004)
Applicant FMC CORPORATION		

<u>Communication</u> <input checked="" type="checkbox"/> by telephone <input type="checkbox"/> personal	<u>Participants</u> <input type="checkbox"/> Applicant: <input checked="" type="checkbox"/> Agent: Barbara Cherry <input checked="" type="checkbox"/> Examiner(s): Humera N. Sheikh	<input type="checkbox"/> Identity checked <input checked="" type="checkbox"/> authorization checked <input type="checkbox"/> personally known
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#### Summary of communication:

Examiner inquired as to whether to complete a 408 Written Opinion form or go directly to a 409/416 IPER disposal form. Examiner indicated that claims 1-3 met the criteria for novelty, inventive step and industrial applicability, however, claims 4-18 did not meet the criteria since they were improper multiple dependent claims. Attorney agreed for the Examiner to complete a 409/416 form for claims 1-3 only.

☐ An extension of time limit is granted (Form PCT/IPEA/427).

☒ A copy of this note is being sent to the applicant with Form PCT/IPEA/429.

PCT/IPEA/424.716 & 409

Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703)305-3230	Authorized officer Humera N. Sheikh <i>J. Roberts for</i> Telephone No. (571) 272-1600
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Form PCT/IPEA/428 (July 1992)

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# INTERNATIONAL SEARCH REPORT

International application No.

PCT/US03/29902

<b>A. CLASSIFICATION OF SUBJECT MATTER</b> IPC(7) : A61K 9/00, 6/00 US CL : 424/400, 401 According to International Patent Classification (IPC) or to both national classification and IPC														
<b>B. FIELDS SEARCHED</b> Minimum documentation searched (classification system followed by classification symbols) U.S. : 424/400, 401  Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched  Electronic data base consulted during the international search (name of data base and, where practicable, search terms used) Please See Continuation Sheet														
<b>C. DOCUMENTS CONSIDERED TO BE RELEVANT</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Category *</th> <th style="width: 70%;">Citation of document, with indication, where appropriate, of the relevant passages</th> <th style="width: 20%;">Relevant to claim No.</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Y</td> <td>US 5,935,556 A (TANNER et al) 10 August 1999 (10.08.1999), see entire document.</td> <td style="text-align: center;">1-3</td> </tr> <tr> <td style="text-align: center;">Y</td> <td>US 5,965,112 A (BRIEVA et al) 12 October 1999 (12.10.1999), see entire document.</td> <td style="text-align: center;">1-3</td> </tr> <tr> <td style="text-align: center;">Y</td> <td>US 6,042,815 A (KELLNER et al) 28 March 2000 (28.03.2000), see entire document.</td> <td style="text-align: center;">1-3</td> </tr> </tbody> </table>			Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.	Y	US 5,935,556 A (TANNER et al) 10 August 1999 (10.08.1999), see entire document.	1-3	Y	US 5,965,112 A (BRIEVA et al) 12 October 1999 (12.10.1999), see entire document.	1-3	Y	US 6,042,815 A (KELLNER et al) 28 March 2000 (28.03.2000), see entire document.	1-3
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<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Further documents are listed in the continuation of Box C.                 </div> <div> <input type="checkbox"/> See patent family annex.                 </div> </div>														
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>* Special categories of cited documents:</p> <p>"A" document defining the general state of the art which is not considered to be of particular relevance</p> <p>"B" earlier application or patent published on or after the international filing date</p> <p>"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)</p> <p>"O" document referring to an oral disclosure, use, exhibition or other means</p> <p>"P" document published prior to the international filing date but later than the priority date claimed</p> </td> <td style="width: 50%; vertical-align: top;"> <p>"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention</p> <p>"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone</p> <p>"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art</p> <p>"&amp;" document member of the same patent family</p> </td> </tr> </table>			<p>* Special categories of cited documents:</p> <p>"A" document defining the general state of the art which is not considered to be of particular relevance</p> <p>"B" earlier application or patent published on or after the international filing date</p> <p>"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)</p> <p>"O" document referring to an oral disclosure, use, exhibition or other means</p> <p>"P" document published prior to the international filing date but later than the priority date claimed</p>	<p>"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention</p> <p>"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone</p> <p>"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art</p> <p>"&amp;" document member of the same patent family</p>										
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Date of the actual completion of the international search 09 January 2004 (09.01.2004)		Date of mailing of the international search report <div style="text-align: center; font-weight: bold; font-size: 1.2em;">11 MAY 2004</div>												
Name and mailing address of the ISA/US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703)305-3230		Authorized officer Humera N. Sheikh <i>J. Roberts for</i> Telephone No. (703) 308-0196												

Form PCT/ISA/210 (second sheet) (July 1998)

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# INTERNATIONAL SEARCH REPORT

International application No.

PCT/US03/29902

## Box I Observations where certain claims were found unsearchable (Continuation of Item 1 of first sheet)

This international report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☐ Claim Nos.:  
because they relate to subject matter not required to be searched by this Authority, namely:
2. ☐ Claim Nos.:  
because they relate to parts of the international application that do not comply with the prescribed requirements to such an extent that no meaningful international search can be carried out, specifically:
3. ☒ Claim Nos.: 4-18  
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

## Box II Observations where unity of invention is lacking (Continuation of Item 2 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

1. ☐ As all required additional search fees were timely paid by the applicant, this international search report covers all searchable claims.
2. ☐ As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this international search report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☐ No required additional search fees were timely paid by the applicant. Consequently, this international search report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:

Remark on Protest

☐  
☐

The additional search fees were accompanied by the applicant's protest.

No protest accompanied the payment of additional search fees.

**Continuation of B. FIELDS SEARCHED Item 3:**

**WEST**

cosmetic, microcrystalline cellulose, emulsifier, water, aqueous, viscosity